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IN THE HIGH COURT OF JUDICATURE AT BOMBAY

APPELLATE CRIMINAL JURISDICTION

CRIMINAL APPEAL NO.314 OF 2002

1) Sadashiv Muttappa Aiwale)
Prisoner No.1486)

2) Mohan Kumar Hatale)
Prisoner No.1487)

both lodged in Kolhapur Central)
Prison, Kalamba, Kolhapur 416 007.).. APPELLANTS

VERSUS

The State of Maharashtra).. RESPONDENT

Mrs.Prajakta P. Shinde, Advocate appointed for the Appellants.

Smt.V.R. Bhosale, Additional Public Prosecutor, for the Respondent.

CORAM: V.G. PALSHIKAR, Acg. C.J. & SMT.NISHITA MHATRE, J.

DATED: 21ST SEPTEMBER 2006

ORAL JUDGMENT : (PER SMT.MHATRE, J.)

. The Appellants challenge the judgment and order dated 10th January 2002 passed by the Sessions Judge, Sangli in Sessions Case No.145 of 2000. The Appellants have been convicted and sentenced under Section 302 read with Section 34 of the Indian Penal Code.

2. The charge against the Appellants is that on 13th March 2000 at about 10.45 a.m. they committed the murder of one Rafiq in furtherance of their common intention. The Appellants had approached the

complainant, who was running a shop selling betel nuts and betel leaves (a paan shop) near a hotel, had demanded protection money from him. The victim, who was standing near the shop, requested the Appellants, who were known to him, not to insist upon such payment. Enraged by the victim's intervention on behalf of the complainant, Appellant No.1 stabbed the victim in the abdomen while Appellant No.2 stabbed him in other places, two or three times with a knife. Both the Appellants fled from the spot. The victim staggered towards the turmeric factory nearby. He then collapsed and was removed to hospital for medical aid. The victim succumbed to the injures within two hours of being admitted in the hospital. The Appellants were arrested on a FIR being lodged by the complainant. Offences punishable under Sections 302, 504 and 506 of the Indian Penal Code were registered against them. Their trial was then committed to Sessions.

3. With the assistance of the learned Advocate appointed for the Appellants, who are in jail, and the learned Additional Public Prosecutor, we have perused the entire evidence on record. We have considered the evidence afresh by reappreciating it and we find that we are unable to differ from the view taken by the learned trial Judge.

4. The prosecution examined seven witnesses in

support of its case. PW1 is the eye witness and the complainant. He has deposed that he was running an illegal business earlier when the Appellants often used to demand money from him. The victim was also running a similar business as the complainant, a little distance away from the complainant's shop. This witness has deposed that whenever he refused payment to the Appellants, they abused him. Similarly, on 13th March 2000 they had tried to extort money from him. On being refused the money, they started abusing and ridiculing the witness. Rafiq, who was present at the site, intervened and requested the Appellants not to trouble the complainant. This witness has then deposed that Appellant No.1 whipped out a knife and stabbed Rafiq in the abdomen. Appellant No.2 also assaulted Rafiq two or three times with another knife. Both the Appellants left the spot. Appellant No.1 carried his knife with him, while Appellant No.2 left it at the spot. Rafiq staggered towards the turmeric factory and then was removed to hospital. This witness has admitted in his cross-examination that both he and Rafiq have illegal businesses which they used to run. He has deposed that the Appellants often extorted money from him as protection money for running the illegal matka business. The deposition of this witness in the examination in chief has not been shaken during detailed cross-examination on behalf of the Appellants.

5. The learned Advocate for the Appellants submitted that PW1 had not bothered to rush Rafiq to hospital although he saw him lying in front of his shop. However, this submission does not help the Appellants in any manner since the conduct of the complainant is understandable. The possibility of him feeling threatened had he removed the victim to hospital cannot be ruled out. Moreover, merely because the victim was not removed to the hospital by this witness or this witness had not helped the victim when he was injured would not lead to an inference that his testimony should be disbelieved. This witness then went to the hospital and was present when Rafiq died. He lodged the complaint with the police at about 1.30 p.m. on that day. In our opinion, the learned trial Court has rightly accepted the evidence of this witness who was an eye witness to the incident.

6. The injuries sustained by the victim have been described by PW5, the Doctor who had attended the injured Rafiq. These injuries could have been caused by knives, according to PW5. The Doctor has deposed that the victim had informed him when he was admitted that he was assaulted with a sharp object by Sada and Mohan, the Appellants. This witness has also stated that the victim was well oriented and conscious when he made this disclosure. The medical evidence of the incised stab

wounds is corroborated by ocular evidence of PW1. The Doctor has opined that the death occurred due to the bleeding injuries sustained by the victim. These injuries were inflicted on the vital organs of the victim's body. The witness has proved the post mortem report as well.

7. In our opinion, the evidence of PW1 has been fully corroborated by the evidence of PW4. He has stated that he rushed to the spot where Rafiq was found lying when informed of the assault on Rafiq. This witness had removed the injured Rafiq to hospital. He has stated that Rafiq had sustained bleeding injuries due to which his hands were bloodied when he lifted Rafiq and removed him to hospital. This witness has further stated that the victim told him that he was assaulted by the Appellants. There is no reason, in our opinion, to disbelieve the evidence of PW1 and PW4 which establishes the fact that the Appellants have committed a culpable homicide. The only issue is whether it can be treated as culpable homicide not amounting to murder.

8. In our opinion, the trial Court has rightly not believed the recovery panchanama where a knife used by Appellant No.1 has been recovered. This recovery was made from an open area which was accessible to several people. The recovery was made after a couple of days. This is a further circumstance which has rightly led the

trial Court to discard the recovery. PW2 is the panch witness who has deposed to the inquest panchanama and the spot panchanama. PW3 is another shop keeper in the area who has deposed that he had acceded to the demand of the Appellants for money. However, his testimony is not very relevant. PW6 is the Police Officer who investigated the crime. He has deposed regarding the seizure of the knife used by Appellant No.1. PW7 is the Police Inspector who initially investigated the crime and seized the blood stained articles of clothing of the deceased. This witness has deposed that the Appellants could not be traced for quite some time after the incident. In fact, the Appellants had been arrested on 16th March 2000.

9. Thus, on reappreciating the evidence, we find that there is no need to differ from the view taken by the trial Court. There is no perversity in the impugned judgment. The trial Court has appreciated the evidence led before it in the proper perspective and has justifiably convicted and sentenced the Appellants.

10. Appeal dismissed.

11. The fees of the Advocates appearing for both the Appellants and the State are quantified at Rs.2,000/- (Rupees Two Thousand only) each.

(V.G.PALSHIKAR, Acg.C.J.)

(SMT.NISHITA MHATRE, J.)